Supreme Court, U.S.
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No. 92-715

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

RICHARD F. ULLOA and DAVID J. ULLOA,
Petitioners,

v.

WESTERN SYSTEMS, INC. and LEE M. HOLMES,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Pursuant to Rule 15.6 of the United States Supreme Court Rules, Petitioners make the following points in reply to Respondents' Brief in Opposition:

A. The arguments made by Respondents further demonstrate the need for this Court's clarification and guidance as to the issues raised by this appeal.

Respondents spend the majority of their opposition brief attempting to argue that there is no conflict among the Ninth Circuit's opinion, 958 F.2d 864, this Court's decision in *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140 (1988), and the decisions of all other Circuits that have interpreted the *Chick Kam Choo* decision. Respondents' arguments notwithstanding, there can be no real dispute that a conflict exists. It is incontrovertible that the Ninth Circuit **expressly acknowledged this in its opinion,** when it stated:

> In the wake of *Choo*, five circuits have concluded that the relitigation exception is now limited to issues actually litigated by the federal court.
>
> * * *
>
> **We disagree with those Circuits** which have concluded that the relitigation exception is limited to issues "actually litigated" in a prior court proceeding.

958 F.2d at 870; Appendix at 9a-10a (emphasis added).

A simple review of the Ninth Circuit's opinion reveals that the conflicts and uncertainty created by the Ninth Circuit's Opinion, discussed in the instant Petition, are very real. It is hard to imagine a case more appropriate for certiorari review. As the Rules of this Court outline:

> **Rule 10. Considerations Governing Review on Writ of Certiorari**
>
> .1 A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for writ of certiorari will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:
>
> (a) **When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter** or has decided a federal question in a way in conflict with a state court of last resort; or has so departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
>
> (b) When a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or a United States court of appeals.

> (c) **When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court**, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

United States Supreme Court Rules, Rule 10 (1990) (emphasis added).

This case not only presents the requisite "special and important" reasons justifying the grant of this Court's discretionary review, it presents a near-classic case for certiorari review. As shown in the instant petition, this case presents an incontrovertible conflict among several circuits, and presents this Court with an opportunity to address several important issues of federal law. This case fits squarely within the type of cases described in Rule 10.

Respondents' lengthy arguments regarding their position as to the lack of any conflict with this Court's decision in *Chick Kam Choo* or with the decisions of the other circuit courts only serve as additional proof of the need for this Court's guidance as to these issues. Respondents' arguments may be appropriate for the briefing of the merits of this appeal; they only strengthen the case in favor of granting review of this matter.

B. The "Compelling Circumstances" referred to by Respondents do not render this case less appropriate for certiorari review

Respondents also spend a considerable amount of effort in attempting to demonstrate that this case, and in particular, Petitioners, are somehow not worthy of this Court's consideration. Needless to say, Petitioners strongly dispute Respondents' allegations of "bad faith" and "petulant refusal to accept the judgments of the federal courts." The dispute is closely intertwined with the parties' differing views of the issues

presented by this Petition. Whereas Respondents allege that the instant matter is a blatant attempt to relitigate old matters, Petitioners maintain that they seek to assert new and different claims which were not previously decided. Again, the debate over these "facts" is a matter that should be, and will be addressed during the briefing of the merits of this appeal should this appeal be granted.

Even if the characterizations and allegations made by Respondents are accepted as true, the need for this Court's review is not diminished. The "facts," even as Respondents would characterize them, do not diminish either the importance of the issues involved, nor the need for clarification and resolution of the conflicts created by the Ninth Circuit's Opinion. As the Ninth Circuit itself noted below, the facts are "only somewhat relevant to the current appeal." 958 F.2d at 866; Appendix at 3a.

Respectfully Submitted,

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